

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Section 68.4(a) of the Commission's Rules)
Governing Hearing Aid-Compatible Telephones) WT Docket No. 01-309
)
T-Mobile USA, Inc. Petition for Waiver of)
Section 20.19(c)(3) of the Commission's Rules)
)
Samsung Telecommunications America, L.P.)
Request for Waiver of Section 20.19(c)(1)(i) of)
the Commission's Rules)

MEMORANDUM OPINION AND ORDER**Adopted:** September 16, 2005**Released:** September 16, 2005

By the Commission: Commissioner Copps issuing a statement

1. We have before us a request for waiver from T-Mobile USA, Inc. (T-Mobile),¹ a Tier I wireless carrier² that employs the GSM air interface.³ T-Mobile seeks additional time within which to comply with Section 20.19(c)(3)(i)(A) of the Commission's rules, which provides that Tier I wireless carriers must make hearing aid-compatible digital wireless handsets available to consumers by September 16, 2005.⁴ After careful consideration and pursuant to our waiver authority, we grant the T-Mobile

¹ T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules, WT Docket No. 01-309 (filed Aug. 26, 2005) (T-Mobile Waiver Request). *See also* Reply of T-Mobile USA, Inc., WT Docket No. 01-309 (filed Sept. 8, 2005) (T-Mobile Reply Comments).

² In 2002, the Commission defined Tier I wireless carriers as the six wireless carriers with national footprints (AT&T Wireless, Cingular Wireless, Nextel Communications, Sprint PCS, Verizon Wireless, and T-Mobile USA). *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002). Since that time, the Commission consented to Cingular Wireless' acquisition of AT&T Wireless. *See* Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion and Order*, 19 FCC Rcd 21522 (2004). More recently, the Commission consented to the transfer of control of all licenses and authorizations held directly and indirectly by Nextel to Sprint Corporation. *See* Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, FCC 05-148 (rel. Aug. 8, 2005).

³ The Global System for Mobile Communications (GSM) is a digital air interface for wireless systems that divides each wireless channel into eight discrete time slots, which allows up to eight simultaneous calls using the same frequency.

⁴ *See* 47 C.F.R. § 20.19(c)(3)(i)(A); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11194 (2005) (*Hearing Aid Compatibility Reconsideration Order*) at 11232 App. B.

Waiver Request to the extent described herein. Specifically, T-Mobile must make available to consumers: (1) one hearing aid-compatible handset no later than September 16, 2005; (2) two hearing aid-compatible handsets no later than October 16, 2005; and (3) four hearing aid-compatible handsets no later than November 16, 2005. Finally, we impose conditions on T-Mobile in accordance with this limited relief.

2. *Background.* In the 2003 *Hearing Aid Compatibility Order*, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.⁵ Among other actions, the Commission required handset manufacturers, carriers and service providers to collectively take steps to reduce the amount of interference emitted from digital wireless handsets, and established phased-in deployment benchmark dates for the offer of hearing aid-compatible digital wireless handsets.⁶ In this regard, the Commission required each of these classes of entities that do not satisfy the *de minimis* exception⁷ to begin to offer hearing aid-compatible digital wireless handsets by September 16, 2005.⁸

3. In June 2005, we modified the preliminary handset deployment benchmark specific to Tier I wireless carriers in order to provide greater regulatory certainty, while simultaneously ensuring a broad array of choices for hearing impaired individuals who seek to purchase hearing aid-compatible wireless phones.⁹ Specifically, the *Hearing Aid Compatibility Reconsideration Order* established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3 rating.¹⁰ The *Hearing Aid Compatibility Reconsideration Order*, however, did not modify the preliminary deployment benchmark obligations for handset manufacturers or Tier II or Tier III (*i.e.*, non-nationwide) wireless carriers. Handset manufacturers that do not satisfy the *de minimis* exception must offer to service providers by September 16, 2005, at least two U3-rated handset models for each air interface offered.¹¹ Similarly, non-nationwide wireless carriers that do not satisfy the *de minimis* exception must include in their handset offerings at least two U3-rated handset models per air

⁵ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753 (2003); *Erratum*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

⁶ *See id.* at 16780 ¶ 65. *See also* 47 C.F.R. § 20.19(c).

⁷ *See* 47 C.F.R. § 20.19(e)(1)-(2). The *de minimis* exception applies on a per air interface basis and provides that manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of the hearing aid compatibility rules. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S., the service provider would likewise be exempt from the requirements. Manufacturers or mobile service providers that offer three digital wireless handset models must offer at least one compliant handset model. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in the U.S. are required to offer at least one compliant handset model.

⁸ *See id.*

⁹ *See Hearing Aid Compatibility Reconsideration Order*, 18 FCC Rcd at 11208-09 ¶¶ 26-27.

¹⁰ *See id.* at 11232 App. B. *See also* 47 C.F.R. § 20.19(b)(1) (a wireless handset used for public mobile radio services is hearing aid-compatible if it meets, at a minimum, a U3 rating for radio frequency interference); OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005). We note that the new draft standard uses an "M" rating for RF interference immunity, rather than a "U."

¹¹ *See* 47 C.F.R. § 20.19(c)(1)(i).

interface by September 16, 2005.¹²

4. More recently, on September 8, 2005, we ruled that we would accept, until August 1, 2006, the hearing aid compatibility compliance rating for 1900 MHz operation as the overall compliance rating for dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.¹³ In the *Cingular Waiver Order*, we provided additional time for wireless carriers, service providers and manufacturers to ensure that GSM digital wireless handsets operating in the 850 MHz band would be compatible with hearing aids. The action facilitated compliance with the deployment benchmark obligations by Tier I wireless carriers, including T-Mobile, as well as handset manufacturers, including Samsung,¹⁴ and smaller, non-nationwide wireless carriers that offer dual-band GSM digital wireless handsets that must also meet the September 16, 2005, deadline.

5. As referenced earlier, T-Mobile has petitioned for additional time within which to comply with Section 20.19(c)(3)(i)(A) of the Commission's rules. Specifically, T-Mobile has indicated that it will "strive to make available" one hearing aid-compatible handset by September 16, 2005, a second compliant handset no later than October 16, 2005, and two other compliant handsets no later than November 16, 2005.¹⁵ T-Mobile explains that it has "dedicated significant resources to help develop industry standards to ensure that all customers, including those with hearing disabilities, have access to wireless services[.]"¹⁶ and asserts that it cannot comply with the September 16, 2005, deadline given "unique and unusual factual circumstances beyond [its] control[.]"¹⁷

6. Self Help for Hard of Hearing People (SHHH), a nationwide support network that represents people with hearing loss, has filed comments discussing the challenges associated with hearing aid compatibility and supporting the relief sought by T-Mobile.¹⁸ Specifically, SHHH supports T-Mobile's request, indicating that the "time period of 60 days is reasonable . . ."¹⁹ SHHH also requests that T-Mobile deploy compliant handsets as soon as possible rather than delay until all four required handsets are each inventoried and marketable.²⁰ The Alliance for Public Technology submitted comments stating its

¹² See 47 C.F.R. § 20.19(c)(2)(i).

¹³ Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket No. 01-309, *Memorandum Opinion and Order*, FCC 05-166 (rel. Sept. 8, 2005) (*Cingular Waiver Order*).

¹⁴ See Samsung Telecommunications America, L.P. (Samsung) Request for Waiver of Section 20.19(c)(1)(i) of the Commission's Rules, WT Docket No. 01-309 (filed Sept. 2, 2005). Given Samsung's representation that it "already offers two GSM handsets that meet an M3 or M4 rating at 1900 MHz and an M2 or M1 rating at 850 MHz," *id.* at 8, and the company's request for relief consistent with that afforded in the *Cingular Waiver Order*, see *id.* at 13, we dismiss the Samsung request as moot.

¹⁵ See T-Mobile Reply Comments at 3.

¹⁶ T-Mobile Waiver Request at 1.

¹⁷ *Id.* Motorola, the manufacturer of two of the four handsets identified as compliant by T-Mobile "completely and unexpectedly" informed T-Mobile that both of the Motorola models failed to achieve certification. See *id.* at 5.

¹⁸ Comments of Self Help for Hard of Hearing People (SHHH), WT Docket No. 01-309 (filed Aug. 30, 2005) (SHHH Comments) at 1 n.1.

¹⁹ *Id.* at 3.

²⁰ *Id.*

support for T-Mobile, “[i]n light of T-Mobile’s ongoing commitments to address the needs of people with hearing losses[.]”²¹ Finally, the Telecommunications Industry Association (TIA) stresses that all industry stakeholders have been actively and cooperatively engaged in trying to ensure widespread and expeditious availability of hearing aid-compatible digital wireless handsets.²²

7. *Discussion.* For the reasons discussed below, we find that limited relief would be consistent with the Commission’s waiver standard and would serve the public interest.²³ First, in view of the unique circumstances at issue here, strict application of the deadline set forth in the rule would be inequitable. Given the close cooperation between the companies, T-Mobile relied on its vendor’s representation that that company’s digital wireless handsets would be available to T-Mobile for timely distribution.²⁴ T-Mobile asserts that it was surprised when, less than four weeks prior to the September 16, 2005, deadline, its handset vendor informed T-Mobile that the given handsets failed to achieve certification of compliance with the required U3 rating.²⁵ SHHH stated in its comments that T-Mobile appeared to be “on track” to deploy the requisite handsets in a timely manner but for the failure of its vendor to deliver compliant handsets.²⁶ Furthermore, T-Mobile immediately notified the Commission of the new information it had obtained and pledged to undertake remedial measures to provide alternative compliant handsets as quickly as possible.²⁷

8. In addition, the staggered deployment schedule offered by T-Mobile, and adopted today, evinces the company’s meaningful efforts to address the obstacles that are largely out of its control, and addresses SHHH’s concern that T-Mobile deploy compliant handsets in stages, rather than waiting until all are inventoried and ready for market.²⁸ The deployment schedule also ensures that T-Mobile’s customers with hearing disabilities will have at least one hearing aid-compatible handset on September 16, 2005, the deadline set forth in the Commission’s rules and ensures that T-Mobile’s customers will have at

²¹ Comments of the Alliance for Public Technology, WT Docket No. 01-309 (filed Sept. 13, 2005) at 2.

²² See Reply Comments of the Telecommunications Industry Association, WT Docket No. 01-309 (filed Sept. 8, 2005).

²³ The Commission’s waiver rules require the proponent to show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative. See 47 C.F.R. §§ 1.3, 1.925. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission’s rules may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question).

²⁴ See T-Mobile Waiver Request at 5.

²⁵ See *id.*

²⁶ See SHHH Comments at 2 (noting its support of the waiver because T-Mobile was “caught” by its handset manufacturer).

²⁷ See Letter from Shellie Blakeney, counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 01-309 (filed Aug. 19, 2005).

²⁸ See SHHH Comments at 3.

least two hearing aid-compatible handsets from which to choose no later than October 16, 2005, only thirty days beyond the September 16, 2005, deadline. Ultimately, T-Mobile will offer these customers a full complement of four compliant handsets thirty days later. Thus, the limited extension afforded today satisfies the Commission's goal of ensuring the expeditious introduction of hearing aid-compatible digital wireless handsets.

9. Second, the limited relief afforded here satisfies the public interest requirement in the Commission's waiver standard. T-Mobile has informed us that the company is "fully committed to offering its customers handsets that are compatible with hearing aids[.]"²⁹ Indeed, T-Mobile has played a leading role in the technical efforts to bring hearing aid-compatible digital wireless handsets to the market by chairing the HAC Incubator, a technical group focused on hearing aid compatibility in wireless handsets, within the Alliance for Telecommunications Industry Solutions (ATIS) since 2003.³⁰

10. In addition, the brief extension granted today will permit T-Mobile to have the necessary collateral marketing materials in place, including call-out cards in retail handset displays,³¹ which will ensure a meaningful shopping experience for the company's hearing disabled customers.³² Moreover, the extension will allow T-Mobile to complete the employee training it has already initiated. In light of the relief we grant in this order, we expect T-Mobile to ensure that all of its sales personnel – covering more than 1100 retail outlets – will be able to adequately assist hearing disabled customers desiring suitable handsets during the staggered deployment period.³³

11. Having granted the relief described above, we now turn to consideration of T-Mobile's offer to report to the Commission on its status of compliance "within thirty days of a waiver grant."³⁴ In its filing, SHHH states, "[a]t the very least [T-Mobile] should be required to document what has been done[.]"³⁵ We agree. Accordingly, we impose on T-Mobile the reporting obligations set forth below. We note that these conditions are *in addition* to the hearing aid compatibility rules and procedures set forth in Section 20.19 of the Commission's rules and promulgated pursuant to the *Hearing Aid Compatibility Order* and the more recent *Hearing Aid Compatibility Reconsideration Order*. Thus, the conditions imposed by today's order should not be construed as preempting or otherwise excusing compliance with any hearing aid compatibility rule or policy. Furthermore, to the extent that T-Mobile elects to take advantage of the relief offered in the recent *Cingular Waiver Order*, the company must also adhere to all of the conditions established by that order.³⁶

12. Conditions. T-Mobile must satisfy the following reporting obligations:

1. T-Mobile must file a report no later than October 16, 2005, that includes detailed

²⁹ T-Mobile Waiver Request at 1.

³⁰ See *id.* at 4.

³¹ See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11209 ¶ 27.

³² See T-Mobile Waiver Request at 8.

³³ See *id.*

³⁴ *Id.* at 10.

³⁵ SHHH Comments at 2.

³⁶ See *Cingular Waiver Order* at ¶¶ 22-23.

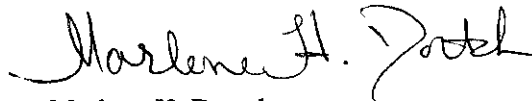
information that describes and discusses with specificity the status of its efforts to make available hearing aid-compatible digital wireless handsets to consumers.

2. T-Mobile must certify in its November 17, 2005, hearing aid compatibility compliance report³⁷ that the company is in full compliance with Section 20.19(c)(3)(i)(A) of the Commission's rules.³⁸ In addition, this report must contain detailed information that describes and discusses with specificity T-Mobile's efforts to make hearing aid-compatible digital wireless handsets available to consumers.

13. Ordering Clauses. Pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules filed by T-Mobile USA, Inc. on August 26, 2005, IS GRANTED to the extent set forth herein.

14. Pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, IT IS ORDERED that the Request for Waiver of Section 20.19(c)(1)(i) of the Commission's Rules filed by Samsung Telecommunications America, L.P. on September 2, 2005, IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

³⁷ See Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Manufacturers, WT Docket No. 01-309, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004).

³⁸ We note that T-Mobile may elect to take advantage of the relief afforded pursuant to the *Cingular Waiver Order* in order to achieve full compliance with this rule.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; T-Mobile Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, Memorandum Opinion and Order (WT Docket No. 01-309).

Today's Order grants T-Mobile a short extension in complying with our hearing aid compatibility rules. As I stated last week when the Commission granted a waiver to Cingular Wireless, I am unhappy that we find ourselves having to do this. Again with hesitation, I will support today's action because the brief extension will ensure that Americans with hearing disabilities will soon have access to digital wireless services. In granting this limited waiver, we understand the T-Mobile will have at least one type of HAC-compliant phone in stores by the September 16, 2005 deadline. Under today's waiver, T-Mobile must have an additional phone within one month—and comply with our HAC rules by making four phones available within two months. We have insisted that T-Mobile file reports with the Commission certifying compliance with the applicable HAC rules. I intend to monitor compliance closely—and expect complete resolution by the firm deadline of November 16, 2005.